FILED
DEC 21 1993

(3)

Case No. 93-775

In The
SUPREME COURT of the UNITED STATES

October Term, 1993

==========

HARLINE K. GEORGE, et al.,

Petitioner,

v.

LEONARD ZLOTOFF and
LOIS ZLOTOFF,

Respondents.

==========

Petition For A Writ Of Certiorari To The California Court Of Appeal

==========

PETITIONER'S REPLY BRIEF

==========

RICHARD D. PROCHAZKA
A Professional Corporation

Richard D. Prochazka*
Marilynn Mika Spencer
5333 Mission Center Road
Suite 220
San Diego, CA 92108
(619) 296-7677
Attorneys for Petitioner

*Counsel of Record

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. SOLID GROUNDS EXIST FOR GRANTING THE WRIT AND THE RESPONDENTS HAVE FAILED TO SHOW OTHERWISE	1
A. George's State Court Complaint Did Not Invoke Federal Labor Law, As Respondents Claim ...	1
B. The Law Does Not And Cannot Support Respondents' Primary Preemption Argument	3
C. George's State Court Claim Was Completely Distinct From The Union's NLRB Claim	4
D. The Question Presented Is One Of First Impression For The State And The Federal Courts; This Court's Decision Will Ensure That The Federal Preference For Consistency Is Maintained	5
III. CONCLUSION	7
APPENDIX A. Complaint For Damages And Breach Of Contract (General Civil)	A-1

AUTHORITY CITED

Page

San Diego Building Trades
Council v. Garmon
359 U.S. 236 (1958) 3, 7

I. INTRODUCTION

Respondents made numerous factual and other misstatements in their Brief in Opposition. These misstatements only serve to mislead this Honorable Court. Petitioner Harline K. George accordingly submits this Reply Brief to correct Respondents' misstatements.

II. SOLID GROUNDS EXIST FOR GRANTING THE WRIT AND THE RESPONDENTS HAVE FAILED TO SHOW OTHERWISE

A. George's State Court Complaint Did Not Invoke Federal Labor Law, As Respondents Claim

In their Brief in Opposition, the Zlotoffs boldly assert that in her complaint, "George alleged that by virtue of this [Stock Purchase] Agreement, she was entitled to enforce the NLRB order against the Zlotoffs in state court." (Respondents' Brief in Opposition, page 3,

"Opposition, p. 3")

This statement by the Zlotoffs is completely untrue. George's complaint in no way alleged a right to enforce the NLRB order.

The issues in George's state court complaint are fundamental to the correct resolution of the question presented for review in this Petition. It is therefore important that there be no confusion on this point.

So that the Court may see for itself the incorrect and misleading nature of the Zlotoffs' statement, quoted above, Appendix A to this Reply Brief is a reformatted copy of George's state court complaint, omitting only the Exhibit attached to the complaint (the Stock Purchase Agreement). Paragraphs 10-13 of the complaint set forth George's breach of contract theory; clearly, George did not allege a right to enforce the NLRB order

in state court.

B. The Law Does Not And Cannot Support Respondents' Primary Preemption Argument

Although it is at odds with the law, Respondents attempt to argue that the breadth of the preemption rule in San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1958) has expanded over time. (Opposition, p. 5) Short of that statement itself, there is no other argument -- and certainly no legal support -- for such an assertion, anywhere in Respondents' Brief.

In contrast, Petitioner George provided numerous decisions of this United States Supreme Court which explicitly demonstrate that this Court has found no NLRB preemption in an increasing number of situations, and has endorsed state court adjudication of a growing number of

complaints. Petitioner George refers the Court to her Petition for a Writ of Certiorari to the California Court of Appeal, at pages 12-13 ("Petition" pp. 12-13), for citations to these cases.

Respondents' assertion to the contrary is not supported by argument or law, and should be discounted.

C. George's State Court Claim Was Completely Distinct From The Union's NLRB Claim

There is nothing in the record to support factual misstatements by the Respondents that Petitioner George first brought "her" claim or an "identical" claim before the NLRB. (Opposition, pp. 8-9; p.11) Petitioner will not burden the record by appending to this brief copies of the voluminous documentation which demonstrates the falseness of this claim.

The record of the parallel proceeding

brought by Amalgamated Transit Union against Aztec Bus Lines, Inc. clearly discloses that Petitioner never filed any charge or complaint against Aztec Bus Lines, Inc. or the Respondents, except for the existing proceeding. Petitioner refers this Court to her Petition at page 8 and pages 15 through 16 for an exposition of how George's state court complaint materially differed from the Union's NLRB complaint with respect to issues, remedy, and parties.

D. The Question Presented Is One Of First Impression For The State And The Federal Courts; This Court's Decision Will Ensure That The Federal Preference For Consistency Is Maintained

This Court frequently decides questions which have never before been

directly addressed by any court. In such circumstances, this Court regularly analyzes its own decisions, and those from other courts, regarding the most closely related issues.

Rather than encouraging this established and comprehensive approach, the Zlotoffs argue that this Court should completely disregard its own decisions, even in a case of first impression. (Opposition, pp. 9-10)

If the Zlotoffs' approach is followed, novel issues will never be resolved, and the likelihood for conflicting appellate decisions greatly increases. Therefore, Petitioner George welcomes this Court's consideration of all relevant authority in the instant case of first impression.

III. CONCLUSION

The Respondents failed to address the issue presented to this Court: Is a creditor's state court enforcement of a "pay all bills" provision in a corporate stock sales agreement preempted by the National Labor Relations Act? The lower court decisions conflict with this Court's decisions in Garmon, supra, and the issue before this Court is one of first impression, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

RICHARD D. PROCHAZKA,
A Professional Corporation

Richard D. Prochazka*
Marilynn Mika Spencer
5333 Mission Center Road
Suite 220
San Diego, CA 92108
(619) 296-7677

Attorneys for Petitioner

*Counsel of Record

APPENDIX A

A-1

Marilynn Mika Spencer, Esq.
RICHARD D. PROCHAZKA,
A Professional Corporation
5333 Mission Center Road
Suite 220
San Diego, California 92108
(619) 296-7677

Attorneys for Plaintiff

C O P Y
KENNETH E. MARTONE
Clerk of the Superior Court

DEC 28, 1990

By: C. Ghio, Deputy
Business

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

HARLINE K. GEORGE, now known as HARLINE K. PROCHAZKA,	) CASE NO. 632268
Plaintiff,	) COMPLAINT FOR DAMAGES AND BREACH OF CONTRACT
v.	) (General Civil)
LEONARD ZLOTOFF and LOIS ZLOTOFF,	)
Defendants.	)

Plaintiff alleges:

1. Aztec Bus Lines, Inc. ("Aztec") was a California corporation formerly doing business in San Diego, California.

2. Prior to August 23, 1980, Leonard Zlotoff and Lois Zlotoff owned controlling interest in Aztec Bus Lines, Inc.

3. Harline K. George, now known as Harline K. Prochazka ("Plaintiff") commenced employment with Aztec prior to August 23, 1980.

4. At all times relevant to this complaint, Plaintiff was represented, for purposes of collective bargaining, by Bus Drivers Local Division 1309 of the Amalgamated Transit Union, AFL-CIO ("Union").

5. Due to unfair labor practices committed by Aztec, the represented employees of Aztec went on strike on or about August 23, 1980.

6. Plaintiff and other striking

employees of Aztec made an unconditional offer to return to work in April of 1981.

7. On or about September 30, 1982, a National Labor Relations Board ("NLRB") Administrative Law Judge ordered Aztec to reinstate the Plaintiff and others to their positions as bus drivers and to pay them all lost wages and other benefits from April 4, 1981 until the date of their reinstatement.

8. Aztec failed and refused to reinstate Plaintiff to her position as a bus driver. Aztec failed and refused to pay Plaintiff any backpay or fringe benefits.

9. As of December 31, 1986 Leonard Zlotoff and Lois Zlotoff ("Defendants") owned 900 of the 1,000 shares of common stock of Aztec.

10. Defendants contracted with James V. Pike ("Pike") to sell their Aztec

stock, at a time subsequent to the NLRB Administrative Law Judge's Order to Aztec to reinstate the Plaintiff.

11. On or about December 31, 1986 Defendants executed a written Stock Purchase Agreement to sell their shares of Aztec common stock to Pike. A copy of that Agreement is attached hereto marked Exhibit "A" and incorporated herein by this reference as though fully set forth.

12. Under the terms of the Stock Purchase Agreement, Defendants agreed with the Buyer that "it is the intent of the parties that Seller [Defendants herein] bear the liabilities existing as of December 31, 1986, and Buyer [Pike] bears the risk of operations thereafter."

13. When Defendants contracted to sell Aztec, and therein assumed all liabilities as of December 31, 1986 per their Stock Purchase Agreement with Pike,

Aztec's liabilities included Plaintiff's backpay award.

14. On July 22, 1988 the NLRB confirmed its Administrative Law Judge's Order to Aztec to reinstate the Plaintiff and to pay all backpay due.

15. Aztec continued to fail and refuse to reinstate Plaintiff. Aztec has failed and refused to pay any backpay or any fringe benefits to Plaintiff during times relevant herein.

16. Aztec has effected an Assignment for the Benefit of Creditors as of March 20, 1990, through the Hamer Group, as Assignee.

17. The Hamer Group has advised creditors that sums due secured creditors of Aztec exceed the value of Aztec's assets and as a result, there are no funds to pay any sums due under the NLRB's award.

18. As a result of the Administrative Law Judge's Order, subsequently confirmed by the National Labor Relations Board and the U.S. Court of Appeals, D.C. Circuit, Aztec owed Plaintiff wages and fringe benefits from April 4, 1981 to December 31, 1986 in an amount of approximately $200,000.00 including interest accrued and accumulated under the NLRB's rules governing backpay calculation.

19. Defendants have failed and refused to pay Plaintiff any of the backpay due to her.

20. Plaintiff has demanded payment from Defendant Leonard Zlotoff, but no such payment has been made.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For compensatory damages in the

sum of $200,000.00;

2. For interest at the legal rate, calculated from December 31, 1986 until date of payment;

3. For reasonable attorneys' fees according to proof;

4. For costs of suit herein incurred; and

5. For such other and further relief as the Court may deem proper.

Dated: December 28, 1990

RICHARD D. PROCHAZKA,
A Professional Corporation

By_/s/_____
Marilynn Mika Spencer